

CASREF,PAW

**U.S. District Court
Southern District of Florida (Ft. Lauderdale)
CIVIL DOCKET FOR CASE #: 0:10-cv-62214-JEM**

Bell v. Tyrie et al
Assigned to: Judge Jose E. Martinez
Referred to: Magistrate Judge Patrick A. White
Cause: 28:1983 Civil Rights

Date Filed: 11/16/2010
Jury Demand: Plaintiff
Nature of Suit: 550 Prisoner: Civil
Rights
Jurisdiction: Federal Question

Plaintiff

James A. Bell
Prisoner ID: L79545

represented by **James A. Bell**
L79545
Everglades Correctional Institution
1599 S.W. 187 Avenue
Miami, FL 33194
PRO SE

V.

Defendant

Kevin Tyrie, Jr.
Deputy, #15190

represented by **Alain E. Boileau**
Alain E. Boileau, P.A.
Post Office Box 880687
Boca Raton, FL 33488
561-901-2283
Email: aeblawfirm@gmail.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Robert Hunt Schwartz
McIntosh Schwartz, P.L.
888 SE 3rd Avenue
Suite 500
Fort Lauderdale, FL 33335-9002
954-523-5885
Fax: 954-760-9531
Email: rhs@mcintoshschwartz.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Morris Magloire
Deputy, #8988

represented by **Alain E. Boileau**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Robert Hunt Schwartz
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
11/16/2010	<u>1</u>	COMPLAINT Under the Civil Rights Act, 42 U.S.C. 1983 against Morris Magloire, Kevin Tyrie, Jr. Filing fee \$ 350.00. IFP Filed, filed by James A. Bell.(asl) Modified event for MJSTAR on 2/18/2011 (bb). (Entered: 11/16/2010)
11/16/2010	<u>2</u>	APPLICATION to Proceed Without Prepayment of Fees and Affidavit by James A. Bell. (asl) (Entered: 11/16/2010)
11/16/2010	3	Judge Assignment RE: Electronic Complaint to Judge Jose E. Martinez (asl) (Entered: 11/16/2010)
11/16/2010	4	Clerks Notice of Magistrate Judge Assignment to Magistrate Judge Patrick A. White. Pursuant to Administrative Order 2003-19 for a ruling on all pre-trial, non-dispositive matters and for a Report and Recommendation on any dispositive matters. Motions referred to Patrick A. White. (asl) (Entered: 11/16/2010)
12/09/2010	<u>5</u>	ORDER denying <u>2</u> Motion for Leave to Proceed in forma pauperis. The plaintiff shall submit the six month account statement on or before December 30, 2010. Signed by Magistrate Judge Patrick A. White on 12/8/2010. (tw) (Entered: 12/09/2010)
12/09/2010	<u>6</u>	ORDER OF INSTRUCTIONS TO PRO SE CIVIL RIGHTS LITIGANTS. Signed by Magistrate Judge Patrick A. White on 12/8/2010. (tw) (Entered: 12/09/2010)
12/22/2010	<u>7</u>	IMPLIED MOTION to Proceed in forma pauperis by James A. Bell. (asl) (Entered: 12/22/2010)
01/04/2011	<u>8</u>	ORDER Permitting Plaintiff to Proceed without Prepayment of Filing Fee but Establishing Debt to Clerk of \$350.00; granting <u>7</u> Motion for Leave to Proceed in forma pauperis. Signed by Magistrate Judge Patrick A. White on 1/4/2011. (br) (Entered: 01/04/2011)
01/11/2011	<u>9</u>	NOTICE of Change of Address by James A. Bell. Note: System updated. (ral) (Entered: 01/11/2011)
01/19/2011	<u>10</u>	NOTICE of Change of Address by James A. Bell. Note: System Updated. (ral) (Entered: 01/19/2011)
02/17/2011	<u>11</u>	REPORT AND RECOMMENDATIONS on 42 USC 1983 case re <u>1</u> Complaint filed by James A. Bell. Recommending 1. This case shall proceed on the claim of use of excessive force against Deputies Tyrie and Magloire. 2. Service will be ordered by separate order. Objections to R&R due by 3/7/2011. Signed by Magistrate Judge Patrick A. White on 2/17/2011. (tw) (Entered: 02/17/2011)

03/02/2011	<u>12</u>	ORDER RE SERVICE OF PROCESS REQUIRING PERSONAL SERVICE UPON AND INDIVIDUAL. The United States Marshal shall serve a copy of the complaint and appropriate summons upon: Kevin Tyrie, Jr., Deputy Sheriff, Broward County Main Jail, 555 S.E. First Avenue, Fort Lauderdale, FL 33301-2921 and Deputy Sheriff Magloire, Broward County Main Jail, 555 S.E. First Avenue, Fort Lauderdale, FL 33301-2921. Signed by Magistrate Judge Patrick A. White on 3/1/2011. (tw) (Entered: 03/02/2011)
03/07/2011	<u>13</u>	Summons Issued as to Morris Magloire. (br) (Entered: 03/07/2011)
03/07/2011	<u>14</u>	Summons Issued as to Kevin Tyrie, Jr. (br) (Entered: 03/07/2011)
04/04/2011	<u>15</u>	SUMMONS (Affidavit) Returned Executed by James A. Bell. Morris Magloire served on 3/30/2011, answer due 4/20/2011. (ral) (Entered: 04/04/2011)
04/04/2011	<u>16</u>	SUMMONS (Affidavit) Returned Executed by James A. Bell. Kevin Tyrie, Jr served on 3/29/2011, answer due 4/19/2011. (ral) (Entered: 04/04/2011)
04/19/2011	<u>17</u>	ANSWER and Affirmative Defenses to Complaint by Morris Magloire, Kevin Tyrie, Jr.(Boileau, Alain) (Entered: 04/19/2011)
04/26/2011	<u>18</u>	SCHEDULING ORDER: Amended Pleadings due by 8/19/2011. Discovery due by 8/5/2011. Joinder of Parties due by 8/19/2011. Motions due by 9/9/2011.. Signed by Magistrate Judge Patrick A. White on 4/25/2011. (tw) (Entered: 04/26/2011)
05/25/2011	<u>19</u>	MOTION for Extension of Time re <u>18</u> Scheduling Order, MOTION to Appoint Counsel by James A. Bell. Responses due by 6/13/2011 (yha) (Entered: 05/25/2011)
05/26/2011	20	ORDER denying <u>19</u> Motion for Extension of Time without prejudice; denying <u>19</u> Motion to Appoint Counsel. The motion for counsel is denied, and therefore there is no need to extend the pre-trial dates at this time.. Signed by Magistrate Judge Patrick A. White on 5/26/2011. (cz) (Entered: 05/26/2011)
07/11/2011	<u>21</u>	MOTION to Compel <i>Plaintiff's Answers to Defendants' Interrogatories and Responses to Defendants' Request for Production</i> by Morris Magloire, Kevin Tyrie, Jr. Responses due by 7/28/2011 (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Boileau, Alain) (Entered: 07/11/2011)
07/12/2011	22	ORDER granting <u>21</u> Motion to Compel, the plaintiff shall respond to all discovery requests to the best of his ability or risk sanctions.. Signed by Magistrate Judge Patrick A. White on 7/12/2011. (cz) (Entered: 07/12/2011)
08/16/2011	<u>23</u>	Defendant's MOTION to Compel <i>Compliance with Court's Paperless Order dated July 12, 2011 DE 22</i> by Morris Magloire, Kevin Tyrie, Jr. Responses due by 9/2/2011 (Schwartz, Robert) Modified text on 8/17/2011 (asl). (Entered: 08/16/2011)
08/17/2011	24	ORDER granting <u>23</u> Defendants' Motion to Compel plaintiff to file verified answers to interrogatories and answer them in a more complete manner. Further the plaintiff shall respond to defendants' requests for production or risk sanctions in this case.. Signed by Magistrate Judge Patrick A. White on 8/17/2011. (cz) (Entered: 08/17/2011)

09/08/2011	<u>25</u>	Second MOTION to Compel <i>Compliance with Court's Orders and Sanctions</i> by Morris Magloire, Kevin Tyrie, Jr. Responses due by 9/26/2011 (Schwartz, Robert) (Entered: 09/08/2011)
09/12/2011	<u>26</u>	ORDER deferring ruling on <u>25</u> Motion to Compel. The defendants seek sanctions and dismissal of this case. The plaintiff shall file a response to this motion with the Court on or before 9/30/11 or risk dismissal of this case.. Signed by Magistrate Judge Patrick A. White on 9/12/2011. (cz) (Entered: 09/12/2011)
09/28/2011	<u>27</u>	NOTICE by Morris Magloire, Kevin Tyrie, Jr of <i>Plaintiff's Failure to File Pretrial Statement</i> (Schwartz, Robert) (Entered: 09/28/2011)
09/29/2011	<u>28</u>	RESPONSE to Motion re <u>25</u> Second MOTION to Compel <i>Compliance with Court's Orders and Sanctions</i> filed by James A. Bell. Replies due by 10/11/2011. (yha) (Entered: 09/29/2011)
10/03/2011	<u>29</u>	ORDER granting in part and denying in part <u>25</u> Motion to Compel, the plaintiff has instigated this lawsuit, it is his responsibility to provide the defendants with the requested discovery, the plaintiff must review the requested discovery and make a better attempt to comply with the defendants' requests. Further the plaintiff must file a pre-trial statement forthwith.. Signed by Magistrate Judge Patrick A. White on 10/3/2011. (cz) (Entered: 10/03/2011)
10/07/2011	<u>30</u>	REPLY to Response to Motion re <u>25</u> Second MOTION to Compel <i>Compliance with Court's Orders and Sanctions</i> filed by Morris Magloire, Kevin Tyrie, Jr. (Schwartz, Robert) (Entered: 10/07/2011)
10/07/2011	<u>31</u>	Statement of: Pretrial by Morris Magloire, Kevin Tyrie, Jr (Schwartz, Robert) (Entered: 10/07/2011)
10/14/2011	<u>32</u>	ORDER ADOPTING REPORT AND RECOMMENDATIONS for <u>1</u> Complaint/Petition filed by James A. Bell ; adopting Report and Recommendations re <u>11</u> Report and Recommendations.. Signed by Judge Jose E. Martinez on 10/13/2011. (ls) (Entered: 10/14/2011)

PACER Service Center			
Transaction Receipt			
10/20/2011 15:47:49			
PACER Login:	vl0006	Client Code:	
Description:	Docket Report	Search Criteria:	0:10-cv-62214-JEM
Billable Pages:	3	Cost:	0.24

(Rev. 09/2007) Complaint Under The Civil Rights Act, 42 U.S.C. § 1983

cat/div 550/1983/Broward
Case # _____ UNITED STATES DISTRICT COURT
Judge _____ Mag White Southern District of Florida
Motn lfp ☒ Fee pd \$ _____ Case Number: _____
Receipt # _____

FILED by ABG D.C.
NOV 16 2010
STEVEN M. LAFIMORE
CLERK U.S. DIST CT
S.D. of FLA. - MIAMI

James A. Bell
(Enter the full name of the plaintiff in this action)

v.

Deputy Kevin Tyrie Jr. #15190
Deputy Melorris Magleire #8985
Et Al

(Above, enter the full name of the defendant(s) in this action)

A COMPLAINT UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983

Instructions for Filing:

This packet includes four copies of the complaint form and two copies of the Application to Proceed without Prepayment of Fees and Affidavit. To start an action you must file an original and one copy of your complaint for the court and one copy for each defendant you name. For example, if you name two defendants, you must file the original and three copies of the complaint (a total of four) with the court. You should also keep an additional copy of the complaint for your own records. All copies of the complaint must be identical to the original.

Your complaint must be legibly handwritten or typewritten. Please do not use pencil to complete these forms. The plaintiff must sign and swear to the complaint. If you need additional space to answer a question, use an additional blank page.

Your complaint can be brought in this court only if one or more of the named defendants is located within this district. Further, it is necessary for you to file a separate complaint for each claim that you have unless they are all related to the same incident or issue.

(Rev. 09/2007) Complaint Under The Civil Rights Act, 42 U.S.C. § 1983

There is a filing fee of \$350.00 for this complaint to be filed. If you are unable to pay the filing fee and service costs for this action, you may petition the court to proceed in forma pauperis.

Two blank Applications to Proceed without Prepayment of Fees and Affidavit for this purpose are included in this packet. Both should be completed and filed with your complaint.

You will note that you are required to give facts. THIS COMPLAINT SHOULD NOT CONTAIN LEGAL ARGUMENTS OR CITATIONS.

When these forms are completed, mail the original and the copies to the Clerk's Office of the United States District Court, Southern District of Florida, 400 North Miami Avenue, Room 8N09, Miami, Florida 33128-7788.

I. Parties

In Item A below, place your name in the first blank and place your present address in the third blank.

A. Name of plaintiff: James A. Bell
Inmate #: 301000107
Address: Main Jail P.O. Box 9356
Ft. Lauderdale, FL 33310

In Item B below, place the full name of the defendant in the first blank, his/her official position in the second blank, and his/her place of employment in the third blank. Use Item C for the names, positions, and places of employment for any additional defendants.

B. Defendant: Kevin Tyne Jr.
is employed as Deputy Sheriff
at Broward Sheriff's office / Main Jail

C. Additional Defendants: McMarris Magloire
Deputy Sheriff
Broward Sheriff's office / Main Jail

(Rev. 09/2007) Complaint Under The Civil Rights Act, 42 U.S.C. § 1983

II. Statement of Claim

State here as briefly as possible the facts of your case. Describe how each defendant is involved. Include also the names of other persons involved, dates, and places.

Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Use as much space as you need. Attach an additional blank page if necessary.

SEE ATTACHMENT 1

(Rev. 09/2007) Complaint Under The Civil Rights Act, 42 U.S.C. § 1983

III. Relief

State briefly exactly what you want the court do to do for you. Make no legal arguments. Cite no cases or statutes.

I want to be awarded nominal, compensatory, and punitive damages. First off my rights have been violated. I've been physically hurt and had to have surgery on my eye. I've been through pain and suffering. My vision isn't the same anymore. I believe their motive was intent and involved callous indifference to my rights. To be awarded punitive damages of \$5,000.00 each against the two defendants, also \$10,000.00 in compensatory damages against the defendants.

IV. Jury Demand

Do you demand a jury trial?

☒ Yes

☐ No

(Rev. 09/2007) Complaint Under The Civil Rights Act, 42 U.S.C. § 1983

Signed this 11 day of November, 2010

James Lee
(Signature of Plaintiff)

I declare under penalty of perjury that the foregoing is true and correct. *(optional)*

Executed on: 11-11-10

James Lee
(Signature of Plaintiff)

Statement of Claim

On Tuesday March 9th, 2010 at the Broward County Main Jail in the Central Intake Bureau between the hours of 3am to 4am on the alpha shift (up to 2am), I was a victim of Police Brutality. I was physically and mentally abused. Deputy Kevin Tyrie Jr. and Deputy McMorris Maguire were the suspects in this altercation. This event happened in a Strip Search cell in the booking area. A little after 3am I was escorted into the booking area in front of a Strip Search cell by Deputy Tyrie. Once we got to the front of the cell I asked him "do I have to do that procedure that most inmates do when their brought here". Because usually I know people go in there to change their street clothes to jail uniform or they have to strip down to nothing, bend over and hold your private "parts" up and caught. I only asked this question because I know and upon information and belief deputies have made mistakes before with this type of situation. To my knowledge your suppose to have a certain change to be strip searched. Also two or three years back many inmates were awarded money because of illegal strip searches. Next after I'd asked him that question suddenly he pushed me into the cell and I tried to walk back forwards but he was already coming in towards me swinging punches at me. I was in shock and bewildered because of his rageful reaction, because all I did was ask a question and he just come at me violently. At that time all I could do was cover up and try to block his hits. I don't remember how it happened but next thing I knew I was on the ground with Deputy Tyrie on top of me, and then Deputy Maguire come in and started hitting me while Deputy



Pride in Service with Integrity

DEPARTMENT OF DETENTION AND COMMUNITY CONTROL
INMATE GRIEVANCE FORM

851-7

TO BE COMPLETED BY INMATE

James Bell 301000107 Med-3-1 M.W. 13-19-2010
Inmate's Name Arrest # Cell Facility Date

PART A - INMATE'S GRIEVANCE

I was wrongfully accused of disobeying an order from a staff member in intake and as a result I was physically abused by approximately 6 or 7 deputies. I was charged with a D.R. and wish to appeal. I never had a hearing and never received a copy of the Committee Action sheet.

Staff's response: I found

Sergeant's response: I found

Inmate's Signature

Date Signed

WHEN PART A - INMATE'S GRIEVANCE, IS COMPLETED, KEEP ORIGINAL (WHITE) FORM.
RETURN ALL OTHER COPIES TO ANY STAFF MEMBER TO BE PLACED IN THE GRIEVANCE BOX.

PART B - RESPONSE

You can appeal your DR on an 1/m request form addressed to the facility XO Gibson

Supervisor's Signature/CCN

Date Signed

TO BE COMPLETED IF INMATE WANTS TO APPEAL RESPONSE.

I wish to appeal the response

Inmate's Signature

Date Signed

FACILITY ADMINISTRATOR'S RESPONSE TO APPEAL

Facility Administrator's Signature

Date Signed



Pride in Service with Integrity

DEPARTMENT OF DETENTION AND COMMUNITY CONTROL INMATE GRIEVANCE FORM

8B3) -5

TO BE COMPLETED BY INMATE

James Bell 301000107 8B3 Main 4-25-10
 Inmate's Name Arrest # Cell Facility Date

PART A - INMATE'S GRIEVANCE

I was wrongfully accused of disobeying an order from an officer who was in my cell. I was physically abused by approximately 5 or 6 officers. One of them I only asked one name Deputy Tye. I was told I had a B.R. and I was supposed to receive a copy of the B.R. only they said I had. I can't even know what my charge or charges are for the B.R. All they said was that I have to serve 30 days in performance and I am fed up of my B.R. I didn't even have a proper B.R. nothing. I was told to be done. I'm reaching the end of my patience but I wanted to see a Sgt. or Lt. Brown was supposed to be done. I don't know how things suppose to be done.

Staff's response:

Sergeant's response:

Inmate's Signature

Date Signed

WHEN PART A - INMATE'S GRIEVANCE, IS COMPLETED, KEEP ORIGINAL (WHITE) FORM.
 RETURN ALL OTHER COPIES TO ANY STAFF MEMBER TO BE PLACED IN THE GRIEVANCE BOX.

PART B - RESPONSE

I/m please use the correct form
 addressed to XO Gibson

Supervisor's Signature/CCN

Date Signed

TO BE COMPLETED IF INMATE WANTS TO APPEAL RESPONSE.

I wish to appeal the response

Inmate's Signature

Date Signed

FACILITY ADMINISTRATOR'S RESPONSE TO APPEAL

Facility Administrator's Signature

Date Signed



Pride in Service with Integrity

**Broward Sheriff's Office
Department of Detention
Inmate Request Form**

TO Be Sent TO:
XO S. Ford

(To be Completed by Inmate)

Inmate Name: James Bell Arrest Number: 801000107
 Date of Request: 4-7-10 Housing Location: 8-B1-7
 Date of Birth: 10-1-87 Case Number:

NOTE: Medical requests **must** be completed on an "Inmate Medical Request Form".NOTE: Law Library requests **must** be completed on a "Law Library Request Form".**(Nature of Request) PRINT YOUR REQUEST:**

First off I been wrote an Grievance on the D.R. I was told I had. And That was on the (5th) of March. I was told that I had to serve 30 days in the Box because I was found Guilty of A D.R. - I was wrongfully accused of disobeying an order from a staff member in Intake and as a result, I was physically abused by approximately 6 or 7 deputies. I was charged with a D.R. and (wish to Appeal) I didn't have a proper D.R. Hearing and never received a copy of The Committee Action Sheet. I'm just getting back the Grievance form I sent; they said to Appeal on a I/M Request Form. I'm not trying to spend 30 day in the Box because I need constant contact with my family and P.D.

Inmate's Signature: James Bell Date Signed: 4-7-10 about my case.

***** DO NOT WRITE BELOW THIS LINE-FOR OFFICIAL USE ONLY *******Deputy's Review:**

☐ Inmate's request answered-no other action needed ☒ Request needs further action-routed accordingly

Deputy's Signature/CCN: [Signature] Date: 4/13/10 Time: 0810

"ROUTING LIST" - Inmate Request Form to be sent to:

- | | |
|--|--|
| <input type="checkbox"/> Chaplain | <input type="checkbox"/> Food Services |
| <input type="checkbox"/> Classification/Inmate Work Program | <input type="checkbox"/> Mail Room (Detention) |
| <input type="checkbox"/> Commissary/Inmate Banking | <input type="checkbox"/> Programs |
| <input type="checkbox"/> Confinement Status | <input type="checkbox"/> Property (Detention) |
| <input type="checkbox"/> Community Control | <input type="checkbox"/> Pre-Trial |
| <input checked="" type="checkbox"/> Other (Specify): <u>XO</u> | |

Supervisor's Signature/CCN: [Signature] 2279 Date: 4/10/10 Time: 0236

*****Staff Response or Administrative Action (add additional sheets as needed)*****

DATE RECEIVED: _____

Completed by: _____ CCN: _____ Date: _____

Distribution: Original-Inmate, Yellow and Pink-Housing Deputy

James Bell 301000107
P.O. Box 9356 7C1-7
Ft. Laud. FL 33310

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-62214-CIV-MARTINEZ
MAGISTRATE JUDGE P.A. WHITE

JAMES A. BELL, :
 :
 Plaintiff, :
 :
 v. : REPORT OF
 : MAGISTRATE JUDGE
 DEPUTY KEVIN TYRIE, et al., :
 :
 Defendants. :

I. Introduction

The pro-se plaintiff, James A. Bell, filed a civil rights complaint pursuant to 42 U.S.C. §1983 while confined at the Ft. Lauderdale Main Jail, alleging use of unlawful force by guards. The plaintiff is proceeding in forma pauperis.

This civil action is before the Court for an initial screening pursuant to 28 U.S.C. §1915.

II. Analysis

A. Applicable Law for Screening

As amended, 28 U.S.C. §1915 reads in pertinent part as follows:

Sec. 1915 Proceedings in Forma Pauperis

* * *

(e)(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that -

* * *

(B) the action or appeal -

* * *

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief from a defendant who is immune from such relief.

This is a civil rights action. Such actions require the deprivation of a federally protected right by a person acting under color of state law. See 42 U.S.C. 1983; Polk County v Dodson, 454 U.S.312 (1981); Whitehorn v Harrelson, 758 F. 2d 1416, 1419 (11 Cir. 1985. The standard for determining whether a complaint states a claim upon which relief may be granted is the same whether under 28 U.S.C. §1915(e)(2)(B) or Fed.R.Civ.P. 12(b)(6) or (c). See Mitchell v. Farcass, 112 F.3d 1483, 1490 (11 Cir. 1997) ("The language of section 1915(e)(2)(B)(ii) tracks the language of Federal Rule of Civil Procedure 12(b)(6)"). A complaint is "frivolous under section 1915(e) "where it lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989); Bilal v. Driver, 251 F.3d 1346, 1349 (11 Cir.), cert. denied, 534 U.S. 1044 (2001). Dismissals on this ground should only be ordered when the legal theories are "indisputably meritless," id., 490 U.S. at 327, or when the claims rely on factual allegations that are "clearly baseless." Denton v. Hernandez, 504 U.S. 25, 31 (1992). Dismissals for failure to state a claim are governed by the same standard as Federal Rule of Civil

Procedure 12(b)(6). Mitchell v. Farcass, 112 F.3d 1483, 1490 (11 Cir. 1997) ("The language of section 1915(e)(2)(B)(ii) tracks the language of Federal Rule of Civil Procedure 12(b)(6)"). In order to state a claim, a plaintiff must show that conduct under color of state law, complained of in the civil rights suit, violated the plaintiff's rights, privileges, or immunities under the Constitution or laws of the United States. Arrington v. Cobb County, 139 F.3d 865, 872 (11 Cir. 1998).

To determine whether a complaint fails to state a claim upon which relief can be granted, the Court must engage in a two-step inquiry. First, the Court must identify the allegations in the complaint that are not entitled to the assumption of truth. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Twombly applies to §1983 prisoner actions. See Douglas v. Yates, 535 F.3d 1316, 1321 (11 Cir. 2008). These include "legal conclusions" and "[t]hreadbare recitals of the elements of a cause of action [that are] supported by mere conclusory statements." Second, the Court must determine whether the complaint states a plausible claim for relief. Id. This is a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." The plaintiff is required to plead facts that show more than the "mere possibility of misconduct." The Court must review the factual allegations in the complaint "to determine if they plausibly suggest an entitlement to relief." When faced with alternative explanations for the alleged misconduct, the Court may exercise its judgment in determining whether plaintiff's proffered conclusion is the most plausible or whether it is more likely that no misconduct occurred.¹

¹ The application of the Twombly standard was clarified in Ashcroft v. Iqbal, 129 S.Ct. 1937 (2009).

B. Sufficiency of the complaint

The plaintiff alleges that on March 9, 2010, he was escorted to a strip search cell in the booking area of the Broward County Main Jail by Deputy Tyrie. He questioned the deputy of the need for the search. He contends that Tyrie responded by punching him. He was thrown to the ground with Deputy Tyrie on top of him, and Deputy Magloire came in and started hitting him. He states his injuries required eye surgery and his vision is not the same. He seeks monetary damages. ²

Excessive Force

He alleges the two named deputies assaulted him without reason, resulting in an injury to his eye. An allegation of an unjustified, brutal use of force against an inmate by a guard states a claim under §1983. Perry v. Thompson, 786 F.2d 1093 (11 Cir. 1986). It is not necessary for a prison or jail official to actually participate in the use of excessive force in order to be held liable under §1983, he need only be present at the scene and fail to take steps to protect a victim from a fellow officer's use of excessive force. Fundiller v. City of Cooper City, 777 F.2d 1436, 1441-42 (11 Cir. 1985) ("an officer who is present at the scene and who fails to take reasonable steps to protect the victim of another officer's use of excessive force, can be held liable for his nonfeasance"); Harris v. Chanclore, 537 F.2d 203, 206 (5 Cir. 1976) ("a supervisory officer is liable under [Section] 1983 if he refuses to intervene where his subordinates are beating an inmate in his presence").

²The plaintiff received a disciplinary report and includes copies of his attempts to appeal a finding of guilt for disobeying an officer. He mentioned no eye injury in his grievances.

The plaintiff's claim that he was assaulted by deputies Tyrie and Magloire states a claim for use of excessive force at this preliminary stage.

III. Recommendation

1. This case shall proceed on the claim of use of excessive force against Deputies Tyrie and Magloire.
2. Service will be ordered by separate order.

Objections to this Report may be filed within fourteen days following receipt.

Dated at Miami, Florida, this 17th day of February, 2011.



UNITED STATES MAGISTRATE JUDGE

cc: James A. Bell, Pro Se
#301000107
Ft Lauderdale Main Jail
Address of record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-62214-CIV-MARTINEZ/WHITE

JAMES A. BELL,

Plaintiff,

vs.

DEPUTY KEVIN TYRIE, et al.,

Defendants.

**DEFENDANTS, DEPUTY KEVIN TYRIE, JR. AND DEPUTY McMORRIS
MAGLOIRE'S, ANSWER AND AFFIRMATIVE DEFENSES TO
PLAINTIFF'S COMPLAINT [DE 1]**

Defendants, DEPUTY KEVIN TYRIE, JR. ("TYRIE") and DEPUTY McMORRIS MAGLOIRE ("MAGLOIRE"), by and through their undersigned counsel, and in accordance with the Report of Magistrate Judge, dated February 17, 2011 [DE 11], hereby file their Answer and Affirmative Defenses to Plaintiff, JAMES A. BELL's ("BELL") Complaint [DE 1], and state:

1. TYRIE and MAGLOIRE deny each and every allegation contained within BELL's Complaint herein not specifically admitted and demand strict proof thereof.

AFFIRMATIVE DEFENSES

2. TYRIE and MAGLOIRE allege and assert that they are entitled to qualified immunity because they did not act in any way that would violate any clearly established rights guaranteed to BELL under the Constitution of the United States and/or under any statutory law, of which a reasonable person and/or reasonable law enforcement or detention officer would have known.

3. TYRIE and MAGLOIRE allege and assert that any alleged use of force against BELL was not applied either maliciously or sadistically for the purpose of causing any harm to BELL, but was reasonable and applied in good faith as an immediately necessary coercive measure in efforts to maintain discipline, as well as security, and to bring to an end BELL's ongoing violation, and was necessarily applied only until such time BELL's conduct abated.

4. TYRIE and MAGLOIRE allege and assert that the alleged actions (or lack of action) taken by them, including any alleged use of force, with regard to BELL, were reasonable upon objective evaluation and not so grossly disproportionate to the need to take those actions so as to warrant recovery pursuant to 42 U.S.C. § 1983.

5. TYRIE and MAGLOIRE allege and assert that any alleged use of force against BELL was justifiable, as enumerated in § 776.012, Fla.Stat., in self defense and in the protection of others, including BELL, or other detention personnel.

6. TYRIE and MAGLOIRE allege and assert that, at all times material, they used only such force as was reasonable or necessary under the circumstances, and acted in pursuit of a lawful and legal duty.

7. TYRIE and MAGLOIRE allege and assert that BELL's conduct is the sole cause of his alleged injuries and damages, if any.

8. TYRIE and MAGLOIRE allege and assert that BELL has failed to mitigate his damages.

9. TYRIE and MAGLOIRE allege and assert that BELL has failed to exhaust all required pre-suit remedies, including but not limited to, all correctional administrative procedures.

10. TYRIE and MAGLOIRE allege and assert that, at all times material, they were reasonably relying upon information obtained in their capacity as detention officers and/or were reasonably relying upon

the good faith representations of, and information provided by, fellow law enforcement and/or detention officers.

DEMAND FOR ATTORNEY'S FEES

11. TYRIE and MAGLOIRE further demand reasonable attorneys' fees pursuant to 42 U.S.C. §1988, should they prevail in this action.

GENERAL DENIAL

12. TYRIE and MAGLOIRE further deny each and every other allegation of BELL's Complaint herein not specifically admitted.

RESERVATION OF RIGHTS

13. TYRIE and MAGLOIRE reserve the right to amend and supplement these affirmative defenses adding such affirmative defenses as may appear to be appropriate upon further discovery being conducted in this case.

WHEREFORE, having fully answered BELL's Complaint, TYRIE and MAGLOIRE pray it be dismissed with prejudice and costs and fees awarded to TYRIE and MAGLOIRE.

Dated: April 19, 2011
Fort Lauderdale, Florida

Respectfully submitted,

s/Alain E. Boileau
ALAIN E. BOILEAU (0148598)
aeb@mcintoshschwartz.com
McINTOSH SCHWARTZ, P.L.
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Telephone: (954) 523-5885
Facsimile: (954) 760-9531
Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on April 19, 2011, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/Alain E. Boileau
ALAIN E. BOILEAU

BELL v. DEPUTY KEVIN TYRIE, et al.
CASE NO: 10-62214-CIV-MARTINEZ/WHITE

Service List

James A. Bell

DC #L79545

Everglades Correctional Institution

1599 S.W. 187 Avenue

Miami, FL 33194

Pro Se Plaintiff

[via regular U.S. Mail]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-62214-CIV-MARTINEZ
MAGISTRATE JUDGE P. A. WHITE

JAMES A. BELL,	:	
Plaintiff,	:	
v.	:	<u>ORDER SCHEDULING PRETRIAL</u>
	:	<u>PROCEEDINGS WHEN PLAINTIFF</u>
DEPUTY KEVIN TYRIE, et al.,	:	<u>IS PROCEEDING PRO SE</u>
Defendants.	:	

The plaintiff in this case is incarcerated, without counsel, so that it would be difficult for either the plaintiff or the defendants to comply fully with the pretrial procedures required by Local Rule 16.1 of this Court. It is thereupon

ORDERED AND ADJUDGED as follows:

1. All discovery methods listed in Rule 26(a), Federal Rules of Civil Procedure, shall be completed by **August 5, 2011**. This shall include all motions relating to discovery.
2. All motions to join additional parties or amend the pleadings shall be filed by **August 19, 2011**.
3. All motions to dismiss and/or for summary judgment shall be filed by **September 9, 2011**.
4. On or before **September 23, 2011**, the plaintiff shall file with the Court and serve upon counsel for the defendants a document called "Pretrial Statement." The Pretrial Statement shall contain the following things:

- (a) A brief general statement of what the case is about;
- (b) A written statement of the facts that will be offered by oral or documentary evidence at trial; this means that the plaintiff must explain what he intends to prove at trial and how he intends to prove it;
- (c) A list of all exhibits to be offered into evidence at the trial of the case;
- (d) A list of the full names and addresses of places of employment for all the non-inmate witnesses that the plaintiff intends to call (the plaintiff must notify the Court of any changes in their addresses);
- (e) A list of the full names, inmate numbers, and places of incarceration of all the inmate witness that plaintiff intends to call (the plaintiff must notify the Court of any changes in their places of incarceration); and
- (f) A summary of the testimony that the plaintiff expects each of his witnesses to give.

5. On or before **October 7, 2011**, defendants shall file and serve upon plaintiff a "Pretrial Statement," which shall comply with paragraph 4(a)-(f).

6. Failure of the parties to disclose fully in the Pretrial Statement the substance of the evidence to be offered at trial may result in the exclusion of that evidence at the trial. Exceptions will be (1) matters which the Court determines were not discover-

able at the time of the pretrial conference, (2) privileged matters, and (3) matters to be used solely for impeachment purposes.

7. If the plaintiff fails to file a Pretrial Statement, as required by paragraph 4 of this order, paragraph 5 of this order shall be suspended and the defendants shall notify the Court of plaintiff's failure to comply. The plaintiff is cautioned that failure to file the Pretrial Statement may result in dismissal of this case for lack of prosecution.

8. The plaintiff shall serve upon defense counsel, at the address given for him/her in this order, a copy of every pleading, motion, memorandum, or other paper submitted for consideration by the Court and shall include on the original document filed with the Clerk of the Court a certificate stating the date that a true and correct copy of the pleading, motion, memorandum, or other paper was mailed to counsel. All pleadings, motions, memoranda, or other papers shall be filed with the Clerk and must include a certificate of service or they will be disregarded by the Court.

9. A pretrial conference may be set pursuant to Local Rule 16.1 of the United States District Court for the Southern District of Florida, after the pretrial statements have been filed. Prior to such a conference, the parties or their counsel shall meet in a good faith effort to:

- (a) discuss the possibility of settlement;
- (b) stipulate (agree) in writing to as many facts and issues as possible to avoid unnecessary evidence;
- (c) examine all exhibits and documents proposed to be used at the trial, except

that impeachment documents need not be revealed;

- (d) mark all exhibits and prepare an exhibit list;
- (e) initial and date opposing party's exhibits;
- (f) prepare a list of motions or other matters which require Court attention; and
- (g) discuss any other matters that may help in concluding this case.

10. All motions filed by defense counsel must include a proposed order for the undersigned Magistrate Judge's signature.

DONE AND ORDERED at Miami, Florida, this 25th day of April, 2011.

s/Patrick A. White
UNITED STATES MAGISTRATE JUDGE

cc: James A. Bell, Pro Se
DC #L79545
Everglades Correctional Institution
1599 S.W. 187 Avenue
Miami, FL 33194

Alain E. Boileau, Esq.
McIntosh, Schwartz, P.L.
888 S.E. 3rd Avenue
Suite 500
Fort Lauderdale, FL 33316

Hon. Jose E. Martinez, United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-62214-CIV-MARTINEZ/WHITE

JAMES A. BELL,

Plaintiff,

vs.

DEPUTY KEVIN TYRIE, et al.,

Defendants.

DEFENDANTS' MOTION TO COMPEL PLAINTIFF'S ANSWERS TO
DEFENDANTS' INTERROGATORIES AND RESPONSES TO
DEFENDANTS' REQUEST FOR PRODUCTION

Defendants, DEPUTY KEVIN TYRIE, JR. ("TYRIE") and DEPUTY McMORRIS MAGLOIRE ("MAGLOIRE"), by and through their undersigned counsel, hereby move pursuant to Federal Rules of Civil Procedure 26 and 37, and in accordance with Local Rule 26.1(H), for an order compelling discovery from Plaintiff, JAMES A. BELL ("BELL"). By the filing and signing of this motion, the undersigned counsel for TYRIE and MAGLOIRE certifies pursuant to Local Rule 26.1(I) that he has been unable to resolve the disputed discovery matters extrajudicially, notwithstanding a good-faith effort to do so.

Introduction

TYRIE and MAGLOIRE served BELL with their First Set of Interrogatories and First Request for Production of Documents, over certificate of service dated May 9, 2011. However, as of the date of this motion, TYRIE and MAGLOIRE have received no answers or responses to the aforementioned written discovery. TYRIE and MAGLOIRE are filing concurrently with this motion a copy of their First Set of Interrogatories and First Request for Production (appended hereto

as **Exhibit A** and **Exhibit B** respectively). Additionally, in accordance with Local Rule 26.1(H)(2) and pursuant to BELL's complete failure to respond to the discovery sought to be compelled, TYRIE and MAGLOIRE have not quoted verbatim each discovery request in the following Memorandum of Law.

Memorandum of Law

BELL has outright failed to respond to TYRIE and MAGLOIRE's First Interrogatories and First Request for Production of Documents. Pursuant to Federal Rule of Civil Procedure 33, governing interrogatories to parties:

The party upon whom the interrogatories have been served *shall serve a copy of the answers, and objections if any, within 30 days after the service of interrogatories*. A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties subject to Rule 29.

Fed.R.Civ.P. 33(b)(3) (emphasis added). Similarly, pursuant to Federal Rule of Civil Procedure 34, governing the production of documents:

The party upon whom the request [for production] is served *shall serve a written response within 30 days* after the service of the request. A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties, subject to Rule 29. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for the objection shall be stated.

Fed.R.Civ.P. 34(b) (emphasis added). BELL has failed to respond to TYRIE and MAGLOIRE's written discovery served May 9, 2011, which became due on June 13, 2011. Further, counsel for TYRIE and MAGLOIRE served BELL with correspondence dated June 21, 2011 advising of BELL's failure to serve his answers and responses to TYRIE and MAGLOIRE's written discovery and providing BELL until July 1, 2011 to serve his answers and responses, to no avail. To date, TYRIE and MAGLOIRE have not received any documents responsive to TYRIE and MAGLOIRE's Request for Production, nor received BELL's Answers to TYRIE and MAGLOIRE's Initial Interrogatories propounded by TYRIE and MAGLOIRE on May 9, 2011. Further, BELL has not

requested any additional time to provide his responses to TYRIE and MAGLOIRE's written discovery. TYRIE and MAGLOIRE are entitled to answers and responses to their Rule 33 and Rule 34 discovery requests, in order to prepare and conduct further discovery in this matter. Consequently, TYRIE and MAGLOIRE seek an Order from the Court compelling BELL to serve verified answers to TYRIE and MAGLOIRE's First Interrogatories, and provide responses to TYRIE and MAGLOIRE's First Request for Production, both served over certificate of service dated May 9, 2011.

WHEREFORE, TYRIE and MAGLOIRE respectfully request the Court grant relief in accordance with the arguments and authority presented herein.

Dated: July 11, 2010
Fort Lauderdale, Florida

Respectfully submitted,

s/Alain E. Boileau
ROBERT H. SCHWARTZ (301167)
rhs@mcintoshschwartz.com
ALAIN E. BOILEAU (0148598)
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McINTOSH SCHWARTZ, P.L.
888 SE Third Ave., Suite 500
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Telephone: (954) 523-5885
Facsimile: (954) 760-9531
Attorneys for DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2011, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/Alain E. Boileau
ALAIN E. BOILEAU

BELL v. DEPUTY KEVIN TYRIE, et al.
CASE NO: 10-62214-CIV-MARTINEZ/WHITE

Service List

James A. Bell
DC #L79545
Everglades Correctional Institution
1599 S.W. 187 Avenue
Miami, FL 33194
Pro Se Plaintiff
[via regular U.S. Mail]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-62214-CIV-MARTINEZ/WHITE

JAMES A. BELL,

Plaintiff,

vs.

DEPUTY KEVIN TYRIE, et al.,

Defendants.

**DEFENDANTS DEPUTY KEVIN TYRIE, JR. AND DEPUTY McMORRIS
MAGLOIRE'S INITIAL INTERROGATORIES TO PLAINTIFF, JAMES A. BELL**

Defendants, DEPUTY KEVIN TYRIE, JR. ("TYRIE") and DEPUTY McMORRIS MAGLOIRE ("MAGLOIRE"), by and through their undersigned counsel hereby propound the attached Interrogatories to Plaintiff, JAMES A. BELL ("BELL") to be answered under oath, in writing, within thirty (30) days and in accordance with Rule 26 and Rule 33 of the Federal Rules of Civil Procedure and Local Rule 26.1:

DEFENDANTS' FIRST SET OF INTERROGATORIES
TO PLAINTIFF, JAMES A. BELL

1. Please provide the name, address, telephone number, place of employment and job title of any person who has, claims to have or whom you believe may have knowledge or information pertaining to any fact alleged in the pleadings (as defined in Fed.R.Civ.P. 7(a)) filed in this action, or any fact underlying the subject matter of this action, including any facts surrounding your knowledge of the incident prior to your arrest. If any person listed is currently incarcerated, please list their name, inmate number and place of incarceration.

2. Please state the specific nature and substance of the knowledge that you believe the person(s) identified in your response to Interrogatory No. 1 may have.

3. Please provide the name of each person whom you may use as an expert witness at trial.

6. Please identify each document pertaining to each item of damages stated in your response to Interrogatory No. 5 above.

7. Please identify each document (including pertinent insurance agreements) pertaining to any fact alleged in any pleading (as defined in Fed.R.Civ.P. 7(a)) filed in this action.

8. Regarding the allegations in your complaint, and/or any fact alleged in any pleading (as defined in Fed.R.Civ.P. 7(a), please list each violation you believe each Defendant breached, how and when the alleged violation occurred.
9. Describe in detail how the incident described in the Complaint happened, describing all events in complete detail, stating in your answer all the events relating thereto and in sequential order, including all actions taken by you, if any, to prevent the incident.

9. Describe in detail how the incident described in the Complaint happened, describing all events in complete detail, stating in your answer all the events relating thereto and in sequential order, including all actions taken by you, if any, to prevent the incident.

10. Please state where you were and with whom you had been for the twenty-four (24) hours immediately preceding the alleged incident sued upon. Please state whether you consumed any alcoholic beverages, narcotic drugs and/or prescription drugs within twenty-four (24) hours immediately preceding the incident complained of, and, if so, please state when, where, and with whom, and the type of alcoholic beverage, narcotic drug and/or prescription drug consumed and the amount thereof.

11. On the day you allege the incident described in your Complaint happened, please state the charge for which you were arrested and booked into the Broward County Main Jail, the name of the officer who made the arrest, the agency who arrested you and the date and time of your arrest.

12. Other than the arrest for which you were booked on or about March 9, 2010, the subject of your Complaint, please state the date of any and all prior or subsequent arrest(s), the name(s) of the officer(s) who made each arrest, and the name of the agency(s) who arrested you, the crime(s) which you were accused, and the final disposition of any action that was instituted on any charge(s).

13. Please state if you have been confined to any jail or prison facility *prior to or subsequent to* this incident. If so, when were you previously or subsequently confined, where for what and how long was the length of your confinement?

14. List each item or damage, other than loss of income or earning capacity, that you claim to have incurred as a result of the alleged incident described in the complaint, giving for each item, the date incurred, the name and business address of the person or entity to whom each was paid or is owed, and the goods or services for which each was incurred, including any and all medical expenses claimed by you.

15. Were you charged with any disciplinary action arising out of the alleged incident described in the complaint? If so, what was the nature of the charge; what plea or answer, if any, did you enter to the charge; was any written report prepared by anyone regarding this charge, and if so, what is the name and address of the person or entity that prepared the report; do you have a copy of the report; and was there a hearing or other proceeding on the charge recorded in any manner?

16. Have you ever been convicted of a crime, and if so, how many times and state specifically as to each conviction the name of the crime, the date of the conviction, the name of the court in which you were convicted, the city, county, and state of court of such conviction, and the penalty or punishment imposed by the court as to each conviction.

17. Do you contend that you have lost any income, benefits, or earning capacity in the past or future as a result of the alleged incident described in the complaint? If so, state the nature of the income, benefits, or earning capacity, and the amount and the method that you used in computing the amount.

22. Please state your full name, whether or not you have used any other name than the above, and/or used a different spelling of the name and, if so, state such names in full and state your exact date and place of birth, your present address, all addresses you have lived at for the past 10 years including dates at each address, your social security number and your drivers license number.

23. Did you do anything during this incident to resist, either physically or verbally, and if so, how much resistance did you use during the said arrest or procedure?

JAMES A. BELL

STATE OF FLORIDA

COUNTY OF _____

On this _____ day of _____, 2011, before me, the undersigned Notary Public of the State of Florida, personally appeared _____ who was personally known to me or who has produced _____ as identification, who did take an oath and whose name is subscribed to the within instrument and she/he acknowledged that she/he executed it.

NOTARY PUBLIC

PRINTED NAME OF NOTARY PUBLIC

(Seal)

Dated: May 9, 2011
Fort Lauderdale, Florida

Respectfully submitted,



ROBERT H. SCHWARTZ (301167)
rhs@mcintoshschwartz.com
ALAIN E. BOILEAU (0148598)
aeb@mcintoshschwartz.com
McINTOSH SCHWARTZ, P.L.
888 SE Third Ave., Suite 500
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Telephone: (954) 523-5885
Facsimile: (954) 760-9531
Attorneys for DEFENDANTS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by Regular
U.S. Mail on May 9, 2011, on all counsel or parties of record on the attached service list.



ALAIN E. BOILEAU

BELL v. DEPUTY KEVIN TYRIE, et al.
CASE NO: 10-62214-CIV-MARTINEZ/WHITE

Service List

James A. Bell
DC #L79545
Everglades Correctional Institution
1599 S.W. 187 Avenue
Miami, FL 33194
Pro Se Plaintiff
[via regular U.S. Mail]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-62214-CIV-MARTINEZ/WHITE

JAMES A. BELL,

Plaintiff,

vs.

DEPUTY KEVIN TYRIE, et al.,

Defendants.

DEFENDANTS DEPUTY KEVIN TYRIE, JR. AND DEPUTY McMORRIS
MAGLOIRE'S FIRST REQUEST FOR PRODUCTION
TO PLAINTIFF, JAMES A. BELL

Defendants, DEPUTY KEVIN TYRIE, JR. ("TYRIE") and DEPUTY McMORRIS MAGLOIRE ("MAGLOIRE"), by and through their undersigned counsel, hereby request pursuant to Federal Rule of Civil Procedure 34 and Local Rule 26.1, that Plaintiff, JAMES A. BELL ("BELL"), respond to these requests and produce the following documents to undersigned counsel within thirty (30) days of the service of these requests. Please note that BELL is under a continuing duty to seasonably supplement the production with documents obtained subsequent to the service of his responses, pursuant to Federal Rule of Civil Procedure 26(e).

1. Any and all medical reports prepared by BELL's treating physicians relating to any alleged conditions alleged to be caused by the incident at issue in this lawsuit, including records of any psychologists, psychiatrists or any other health care provider who have treated him for any psychological injuries, including but not limited to, mental pain and suffering and mental anguish.

2. Any and all documents concerning your complete medical background, including, medical records, hospital records, surgical records, mental illness records, financial records, bills,

invoices, writings, notes or memoranda relating to all of BELL's physical, medical and/or mental history, including but not limited to those doctors, nurses, practitioners, hospitals, clinics, institutions or other health care providers or third party private or governmental health or accident insurers;

a. for a period of ten years before and up to the date of the incident alleged in your Complaint; and

b. for a period of time commencing on the date of the first occurrence of misconduct as alleged in your Complaint up to and

including the present date and throughout this litigation.

3. Any and all documents reflecting expenses, other than medical expenses, allegedly incurred as a result of the incident at issue in this lawsuit in your possession and/or control.

4. Any and all statements of TYRIE and/or his agents obtained by you or your attorneys, recorded or written, at the time of or subsequent to the subject incident.

5. Any and all statements of MAGLOIRE and/or his agents obtained by you or your attorneys, recorded or written, at the time of or subsequent to the subject incident.

6. Any and all statements of witnesses relating to facts or issues involved in this lawsuit.

7. Any and all photographs, charts, diagrams, documents, and other physical evidence in BELL's possession and/or control regarding this incident.

8. Any and all documents created by BELL, or his agents, relating to any issue in this lawsuit, including those documents in BELL's possession and/or control.

9. Any and all Grievance Forms pertaining to any issue involved in this lawsuit.

10. Any and all Administrative Responses to any and all Grievance Forms pertaining to any issue involved in this lawsuit.

11. Any and all Grievance Inmate Appeals pertaining to any issue involved in this lawsuit.

12. Any and all findings from any Grievance Forms/Disciplinary Review dispositions pertaining to any issue involved in this lawsuit.

13. Any and all Inmate Request Forms pertaining to any issue involved in this lawsuit.

14. Any and all Administrative Responses to any Inmate Request Forms pertaining to any issue involved in this lawsuit.

15. Any and all Complaints to Broward Sheriff's Office Department of Detention Command Staff pertaining to any issue involved in this lawsuit.

16. Any and all reports pertaining to any issue involved in this lawsuit, including any reports from any expert witness(es) who will testify at trial expert witness(es) who will testify at trial

17. Any statement(s) given to any party regarding this subject matter in your possession and/or control.

18. Any statement(s) given by BELL to any member of the Broward Sheriff's Office Department of Detention (Broward County Jail) pertaining to subject incident.

19. Any statement(s) given by BELL to any member of the Broward Sheriff's Office pertaining to subject incident.

20. Any statement(s) given by BELL to any member of the Broward Sheriff's Office Department of Professional Compliance/Internal Affairs pertaining to subject incident.

21. Any statement(s) given by BELL to any member of the news media regarding the subject incident.

22. Any and all statements, writings, recordings and/or correspondence between BELL and any other party and/or witness regarding the subject incident in your possession and/or control.

23. Any and all statements, writings, recordings and/or correspondence between BELL and any witness to this incident regarding the subject incident in your possession and/or control.

24. Any and all documents pertaining to any lawsuits, claims, settlement agreements,

settlements or attempted settlements, including sworn statements or depositions, for any claims brought by or on behalf of yourself against any police officer, agency or department within the past ten years in your possession and/or control.

25. All records concerning your criminal background, including any arrests or convictions, in this country or any other country, currently in your possession and/or control.

26. Any and all reports pertaining to any issue involved in this lawsuit, including any Incident Reports, Offense Reports, Miscellaneous Incident Cards, FI Cards, Notices to Appear, Probable Cause Affidavits currently within your possession and/or control.

27. Any and all reports relating to any *prior or subsequent arrests*, including any Incident Reports, Offense Reports, Miscellaneous Incident Cards, FI Cards, Notices to Appear, Probable Cause Affidavits currently within your possession and/or control.

Dated: May 9, 2011
Fort Lauderdale, Florida

Respectfully submitted,



ROBERT H. SCHWARTZ (301167)

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ALAIN E. BOILEAU (0148598)

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Telephone: (954) 523-5885

Facsimile: (954) 760-9531

Attorneys for DEFENDANTS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by Regular
U.S. Mail on May 9, 2011, on all counsel or parties of record on the attached service list.


ALAIN E. BOILEAU

BELL v. DEPUTY KEVIN TYRIE, et al.
CASE NO: 10-62214-CIV-MARTINEZ/WHITE

Service List

James A. Bell
DC #L79545
Everglades Correctional Institution
1599 S.W. 187 Avenue
Miami, FL 33194
Pro Se Plaintiff
[via regular U.S. Mail]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-62214-CIV-MARTINEZ/WHITE

JAMES A. BELL,

Plaintiff,

vs.

DEPUTY KEVIN TYRIE, et al.,

Defendants.

**DEFENDANTS RENEWED MOTION TO COMPEL AND MOTION FOR
COMPLIANCE WITH THE COURT'S PAPERLESS ORDER DATED
JULY 12, 2011 [DE 22]**

Defendants, DEPUTY KEVIN TYRIE, JR. ("TYRIE") and DEPUTY McMORRIS MAGLOIRE ("MAGLOIRE"), by and through their undersigned counsel, hereby file their Renewed Motion to Compel and Motion to Compel Compliance from Plaintiff, JAMES A. BELL ("BELL") with the Court's paperless Order, dated July 12, 2011 [DE 22], and state as follows:

1. On May 9, 2011, TYRIE and MAGLOIRE served BELL with their Initial Interrogatories and First Request for Production of Documents. BELL's answers to TYRIE and MAGLOIRE's Initial Interrogatories and responses to Request for Production became due on June 13, 2011, however as of June 13, 2011, TYRIE and MAGLOIRE had not received any documents responsive to the aforementioned written discovery.

2. On July 11, 2011, TYRIE and MAGLOIRE filed their Motion to Compel Plaintiff's Responses to Defendants' Request for Production, [DE 21].

3. On July 12, 2011, this Court granted TYRIE and MAGLOIRE's Motion and ordered, "[t]he plaintiff shall respond to all discovery requests to the best of his ability or risk sanctions." [DE 22].

4. On August 11, 2011, BELL served his non-verified Answers to TYRIE and MAGLOIRE's Initial Interrogatories¹, however failed to serve responses to TYRIE and MAGLOIRE's Request for Production and failed to provide any documents responsive to TYRIE and MAGLOIRE's First Request for Production of Documents, served May 9, 2011.

5. TYRIE and MAGLOIRE seek an Order from the Court compelling BELL to serve his verified answers to TYRIE and MAGLOIRE's Initial Interrogatories, to serve responses to TYRIE and MAGLOIRE's Request for Production and to provide any documents responsive to TYRIE and MAGLOIRE's First Request for Production of Documents, served May 9, 2011 or in the alternative, TYRIE and MAGLOIRE seek an Order from the Court striking BELL's pleadings and dismissing this action with prejudice.

WHEREFORE, TYRIE and MAGLOIRE respectfully request the Court grant relief in accordance with the arguments and authority presented herein as to the discovery matters in dispute.

¹ BELL's Answers to Defendants' Interrogatory Numbers 3, 4, 5, 6, 11, 12, 13, 14, 15, 16 and 19 are inadequate and incomplete and will be addressed in a subsequent Motion to Compel Better Answers if the issues cannot be resolved between the parties prior to filing a Motion.

Dated: August 16, 2011
Fort Lauderdale, Florida

Respectfully submitted,

s/Robert H. Schwartz
ROBERT H. SCHWARTZ (301167)
rhs@mcintoshschwartz.com
McINTOSH SCHWARTZ, P.L.
888 SE Third Avenue, Suite 500
Fort Lauderdale, FL 33316
Telephone: (954) 660-9888
Facsimile: (954) 760-9531
Attorneys for DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on August 16, 2011, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/Robert H. Schwartz
ROBERT H. SCHWARTZ

BELL v. DEPUTY KEVIN TYRIE, et al.
CASE NO: 10-62214-CIV-MARTINEZ/WHITE

Service List

James A. Bell

DC #L79545

Everglades Correctional Institution

1599 S.W. 187 Avenue

Miami, FL 33194

Pro Se Plaintiff

[via regular U.S. Mail]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-62214-CIV-MARTINEZ/WHITE

JAMES A. BELL,

Plaintiff,

vs.

DEPUTY KEVIN TYRIE, et al.,

Defendants.

**DEFENDANTS' SECOND RENEWED MOTION TO COMPEL COMPLIANCE WITH
THE COURT'S PAPERLESS ORDERS DATED JULY 12, 2011 [DE 22] AND AUGUST
17, 2011 [DE 24] AND MOTION FOR SANCTIONS**

Defendants, DEPUTY KEVIN TYRIE, JR. ("TYRIE") and DEPUTY McMORRIS MAGLOIRE ("MAGLOIRE"), by and through their undersigned counsel, hereby file their Second Renewed Motion to Compel Compliance from Plaintiff, JAMES A. BELL ("BELL") with the Court's Orders, dated July 12, 2011 [DE 22] and August 17, 2011 [DE 24], and request sanctions, stating as follows:

1. On May 9, 2011, TYRIE and MAGLOIRE served BELL with their Initial Interrogatories and First Request for Production of Documents. BELL's answers to TYRIE and MAGLOIRE's Initial Interrogatories and responses to Request for Production became due on June 13, 2011, however as of June 13, 2011, TYRIE and MAGLOIRE had not received any documents responsive to the aforementioned written discovery.

2. On July 11, 2011, TYRIE and MAGLOIRE filed their Motion to Compel BELL's Answers to Initial Interrogatories and Responses to First Request for Production, [DE 21].

3. On July 12, 2011, this Court granted TYRIE and MAGLOIRE's Motion and ordered, "[t]he plaintiff shall respond to all discovery requests to the best of his ability or risk sanctions." [DE 22].

4. On August 11, 2011, BELL served his non-verified Answers to TYRIE and MAGLOIRE's Initial Interrogatories which Interrogatory Numbers 3, 4, 5, 6, 11, 12, 13, 14, 15 and 16 were inadequate and incomplete. BELL *still* failed to serve responses to TYRIE and MAGLOIRE's Request for Production and failed to provide any documents responsive to TYRIE and MAGLOIRE's First Request for Production of Documents, served May 9, 2011.

5. On August 17, 2011, this Court granted TYRIE and MAGLIORE's Motion [DE 23] and ordered, "[p]laintiff to file verified answers to interrogatories and answer them in a more complete manner. Further the plaintiff shall respond to defendants' requests for production or risk sanctions in this case." [DE 24].

6. As of the date of the filing of this Motion, TYRIE and MAGLOIRE have not received BELL's better answers to TYRIE and McMORRIS' Interrogatory Numbers 3, 4, 5, 6, 11, 12, 13, 14, 15 and 16, nor non-verified answers to Defendants' Interrogatories, despite the undersigned counsel attempting to resolve the outstanding discovery issues pursuant to Local Rule 26.1(I).¹

7. BELL has outright failed to respond to TYRIE and McMORRIS' Request for Production, despite the Court's Order mandating same on two separate occasions and has failed to provide better answers to TYRIE and McMORRIS' Interrogatory Numbers 3, 4, 5, 6, 11, 12, 13, 14, 15 and 16 despite the Court mandating same.

¹ The undersigned sent correspondence pursuant to Local Rule 26.1(I) to BELL on or about August 16, 2011, in a good faith effort to resolve by agreement the issue raised herein, better answers to Interrogatories and verified answers to Interrogatories.

8. TYRIE and McMORRIS are entitled to *complete* answers to their Rule 33 Initial Interrogatories and entitled to responses and documents responsive, if any, to their Rule 34 Request for Production.

9. TYRIE and McMORRIS seek an Order from the Court awarding sanctions by striking BELL's pleadings and dismissing this action with prejudice for his failure to comply with this Courts Orders [DE 22] and [DE 24], failing to provide TYRIE and McMORRIS complete responses to Rule 33 and failing to respond entirely to TYRIE and McMORRIS' Rule 34 discovery, to which they are entitled.

WHEREFORE, TYRIE and McMORRIS respectfully request the Court grant relief in accordance with the arguments and authority presented herein as to the discovery matters in dispute.

Dated: September 8, 2011
Fort Lauderdale, Florida

Respectfully submitted,

s/Robert H. Schwartz
ROBERT H. SCHWARTZ (301167)
rhs@mcintoshschwartz.com
McINTOSH SCHWARTZ, P.L.
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Telephone: (954) 660-9888
Facsimile: (954) 760-9531
Attorneys for DEFENDANTS

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s/Robert H. Schwartz
ROBERT H. SCHWARTZ

BELL v. DEPUTY KEVIN TYRIE, et al.
CASE NO: 10-62214-CIV-MARTINEZ/WHITE

Service List

James A. Bell
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1599 S.W. 187 Avenue
Miami, FL 33194
Pro Se Plaintiff
[via regular U.S. Mail]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-62214-CIV-MARTINEZ/WHITE

JAMES A. BELL,

Plaintiff,

vs.

DEPUTY KEVIN TYRIE, et al.,

Defendants.

**DEFENDANTS, DEPUTY KEVIN TYRIE, JR. AND DEPUTY McMORRIS
MAGLOIRE'S NOTICE OF PLAINTIFF'S FAILURE TO FILE PRETRIAL
STATEMENT**

Defendants, DEPUTY KEVIN TYRIE, JR. ("TYRIE") and DEPUTY McMORRIS MAGLOIRE ("MAGLOIRE"), by and through their undersigned counsel, and pursuant to the Court's Order Scheduling Pretrial Proceedings When Plaintiff is Proceeding Pro Se, dated April 26, 2011 [DE 18], hereby inform the Court that Plaintiff, JAMES A. BELL ("BELL") has failed to file his Pretrial Statement on or before September 23, 2011:

1. The Court's Scheduling Order [DE 18] provides, in pertinent part, the following instructions: "[i]f the plaintiff fails to file a Pretrial Statement, as required by paragraph 4 of this order, paragraph 5 of this order shall be suspended and the defendants shall notify the Court of plaintiff's failure to comply. The plaintiff is cautioned that failure to file the Pretrial Statement may result in dismissal of this case for lack of prosecution."

2. Pursuant to the Court's aforementioned Order, BELL was required to file with the Court and serve upon counsel for TYRIE and MAGLIORE his Pretrial Statement on or before September 23, 2011.

3. As of the date of this Notice, and upon a review of the docket by undersigned counsel, BELL has failed to either file or serve his Pretrial Statement.

Dated: September 28, 2011
Fort Lauderdale, Florida

Respectfully submitted,

s/Robert H. Schwartz
ROBERT H. SCHWARTZ (301167)
rhs@mcintoshschwartz.com
McINTOSH SCHWARTZ, P.L.
888 Southeast 3rd Avenue, Suite 500
Fort Lauderdale, FL 33316
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Counsel for DEFENDANTS

CERTIFICATE OF SERVICE

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s/Robert H. Schwartz
ROBERT H. SCHWARTZ

BELL v. DEPUTY KEVIN TYRIE, et al.
CASE NO: 10-62214-CIV-MARTINEZ/WHITE

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Pro Se Plaintiff
[via regular U.S. Mail]

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 10 CV 62214 JEM

**The attached hand-written
document
has been scanned and is
also available in the
SUPPLEMENTAL
PAPER FILE**

In The United States District Court

Southern District of FloridaFILED by AS D.C.

SEP 29 2011

STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S.D. FLA - MIAMICase Name: Bell v. Tyrie et al / #: 0:10-CV-62214-JEMMotion In Response To Rept. Page 7

Dated: September 12, 2011

RECEIVED

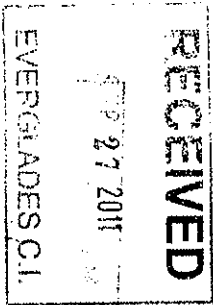
SEP 27 2011

EVERGLADES C.I.

I've Complied with everything the Defendants asked for. They've sent me the same documents over and over and I've answered and followed through with each measure. As you know I am incarcerated and without counsel and I'm trying at the best of my knowledge to proceed in pro-se until I can get an attorney on my side. I've sent all my exhibits, and I've also exhausted my Remedies. I was brutally beaten and in result I was sent to an outside hospital for which I had to undergo surgery on my left eye. In my current situation I'm incapable of retrieving some of the documents the Defendants Attorneys are asking for. These officers violated my rights, privileges and immunities under the Constitution of the United States. They both acted under color of state law. Kevin Tyrie, Jr. and Deputy Morris Magloires' employer has everything I've sent and then some.

Respectfully, Jerry Bell

Bill James L Messers E'1000
1544 SW 187th Ave
Miami FL 33174



EVERGLADES C.I.

3312837716

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SEA BIRDS

USMS INSPECTED

United States District Court
Southern District of Florida
Office of the Clerk RM 8M09
400 N. Miami Ave
Miami, FL 33128-7716

3312837716

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-62214-CIV-MARTINEZ/WHITE

JAMES A. BELL,

Plaintiff,

vs.

DEPUTY KEVIN TYRIE, et al.,

Defendants.

**DEFENDANTS' REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANTS' SECOND
RENEWED MOTION TO COMPEL COMPLIANCE WITH THE COURT'S
PAPERLESS ORDERS DATED JULY 12, 2011 [DE 22] AND AUGUST 17, 2011 [DE 24]**

Defendants, DEPUTY KEVIN TYRIE, JR. ("TYRIE") and DEPUTY McMORRIS MAGLOIRE ("MAGLOIRE"), by and through their undersigned counsel, hereby file their Reply to Plaintiff, JAMES A. BELL ("BELL") Response to TYRIE and MAGLOIRE's Second Renewed Motion to Compel Compliance with the Court's Orders, dated July 12, 2011 [DE 22] and August 17, 2011 [DE 24], and states as follows:

Introduction

This action arises out of the arrest of BELL on March 9, 2010. As a result of BELL's arrest, he filed a Complaint against TYRIE and MAGLOIRE for alleged constitutional violations pursuant to 42 U.S.C. § 1983, specifically, the alleged use of excessive force. TYRIE and MAGLOIRE served written discovery to BELL, which as of the date of TYRIE and MAGLOIRE's Reply, BELL has failed to properly respond to TYRIE and MAGLOIRE's discovery, has failed to comply with this Court's two (2) previous Orders compelling same and has failed to file a Pretrial Statement pursuant to this Court's Order Scheduling Pretrial Proceedings

When Plaintiff is Proceeding Pro Se, dated April 26, 2011 [DE 18]. TYRIE and MAGLOIRE's Reply demonstrates that:

One, BELL has outright failed to provide responses to TYRIE and MAGLOIRE's Request for Production;

Two, BELL has failed to comply with this Court's paperless Order, dated July 12, 2011 [DE 22];

Three, BELL has failed to provide better answers to TYRIE and MAGLOIRE's Initial Interrogatories;

Four, BELL has failed to comply with this Court's paperless Order, dated August 17, 2011 [DE 24];

Five, BELL's Response to TYRIE and MAGLOIRE's Motion to Compel dated September 29, 2011 [DE 2] provides false information that "he has complied with everything the Defendants asked for...." "I've answered and followed through with each measure."

I. BELL has outright failed to provide responses and failed to provide documents responsive to TYRIE and MAGLOIRE's First Request for Production dated May 9, 2011

On May 9, 2011, TYRIE and MAGLOIRE served BELL with their Initial Interrogatories and First Request for Production of Documents. BELL's answers to TYRIE and MAGLOIRE's Initial Interrogatories and responses to Request for Production became due on June 13, 2011, however as of June 13, 2011, TYRIE and MAGLOIRE had not received any documents responsive to the aforementioned written discovery.

II. BELL has failed to comply with this Court's paperless Order, dated July 12, 2011 [DE 22]

On July 11, 2011, TYRIE and MAGLOIRE filed their Motion to Compel BELL's Answers to Initial Interrogatories and Responses to First Request for Production, [DE 21]. On July 12,

2011, this Court granted TYRIE and MAGLOIRE's Motion and ordered, "[t]he plaintiff shall respond to all discovery requests to the best of his ability or risk sanctions." [DE 22].

III. BELL has failed to provide better answers to TYRIE and MAGLOIRE's Initial Interrogatories;

BELL served his *non-verified* Answers to TYRIE and MAGLOIRE's Initial Interrogatories on August 11, 2011. BELL's Answers to Interrogatory Numbers 3, 4, 5, 6, 11, 12, 13, 14, 15 and 16 were inadequate and incomplete. Although BELL served incomplete non-executed Answers to TYRIE and MAGLOIRE's Interrogatories, BELL *still* failed to serve his responses to TYRIE and MAGLOIRE's Request for Production and failed to provide any documents responsive to TYRIE and MAGLOIRE's First Request for Production of Documents.

IV. BELL has failed to comply with this Court's paperless Order, dated August 17, 2011 [DE 23]

On August 16, 2011, TYRIE and MAGLOIRE again filed their Motion to Compel BELL's responses to Request for Production and better answers to Interrogatories [DE 23]. On August 17, 2011, this Court granted TYRIE and MAGLOIRE's Motion [DE 23] and ordered, "[p]laintiff to file verified answers to interrogatories and answer them in a more complete manner. Further the plaintiff shall respond to defendants' requests for production or risk sanctions in this case." [DE 24]. BELL has outright failed to respond to TYRIE and McMORRIS' Request for Production, despite the Court's Order mandating same on two separate occasions and has failed to provide better answers to TYRIE and McMORRIS' Interrogatory Numbers 3, 4, 5, 6, 11, 12, 13, 14, 15 and 16 despite the Court mandating same.

V. BELL's Response to TYRIE and MAGLOIRE's Motion to Compel dated September 29, 2011 [DE 2] provides false information

On September 29, 2011, BELL filed his "Motion In Response to Reply" stating that he has complied with everything the Defendants asked for and further stating that he has answered and followed through with each measure. BELL's "Motion in Response" provides false information

as TYRIE and MAGLOIRE, still as of the date of this Reply have not received (1) BELL's Responses to Request for Production nor documents responsive to any requests; (2) BELL's better answers to TYRIE and MAGLOIRE's Interrogatory Numbers 3, 4, 5, 6, 11, 12, 13, 14, 15 and 16, nor non-verified answers to Defendants' Interrogatories, despite the undersigned counsel attempting to resolve the outstanding discovery issues.

CONCLUSION

TYRIE and McMORRIS are entitled to *complete* answers to their Rule 33 Initial Interrogatories and entitled to responses and documents responsive, if any, to their Rule 34 Request for Production. TYRIE and McMORRIS seek an Order from the Court awarding sanctions by striking BELL's pleadings and dismissing this action with prejudice for his failure to comply with this Courts Orders [DE 22] and [DE 24], failing to provide TYRIE and McMORRIS complete responses to Rule 33 and failing to respond entirely to TYRIE and McMORRIS' Rule 34 discovery, to which they are entitled.

Dated: October 7, 2011
Fort Lauderdale, Florida

Respectfully submitted,

s/Robert H. Schwartz
ROBERT H. SCHWARTZ (301167)
rhs@mcintoshschwartz.com
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888 SE Third Avenue, Suite 500
Fort Lauderdale, FL 33316
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Attorneys for DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2011, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/Robert H. Schwartz
ROBERT H. SCHWARTZ

BELL v. DEPUTY KEVIN TYRIE, et al.
CASE NO: 10-62214-CIV-MARTINEZ/WHITE

Service List

James A. Bell
DC #L79545
Everglades Correctional Institution
1599 S.W. 187 Avenue
Miami, FL 33194
Pro Se Plaintiff
[via regular U.S. Mail]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-62214-CIV-MARTINEZ/WHITE

JAMES A. BELL,

Plaintiff,

vs.

DEPUTY KEVIN TYRIE, et al.,

Defendants.

**DEFENDANTS, DEPUTY KEVIN TYRIE, JR. AND DEPUTY McMORRIS
MAGLOIRE'S PRETRIAL STATEMENT**

Defendants, DEPUTY KEVIN TYRIE, JR. ("TYRIE") and DEPUTY McMORRIS MAGLOIRE ("MAGLOIRE"), by and through their undersigned counsel, and pursuant to the Court's Order Scheduling Pretrial Proceedings When Plaintiff is Proceeding Pro Se, dated April 26, 2011 [DE 18], hereby file their Pretrial Statement:¹

A. Brief General Statement of the Case

Plaintiff, JAMES A. BELL ("BELL") filed a *pro se* Civil Rights Complaint [DE 1] pursuant to 42 U.S.C. § 1983 for violation of his Fourth Amendment rights, namely, use of excessive force during an incident which occurred on March 9, 2010 at Broward County Main Jail. BELL seeks damages against TYRIE and MAGLOIRE as a result of the March 9, 2010 incident.

B. Written Statement of the Facts to be Offered at Trial

On March 9, 2010, TYRIE was employed by the Broward Sheriff's Office as a detention

¹ As of the date of TYRIE and MAGLOIRE's filing of their Pretrial Statement, BELL has not filed his Pretrial Statement which became due September 23, 2011 and has not complied with this Court's Paperless Order dated October 3, 2011 [DE 29] ordering BELL to file

deputy assigned to the Central Intake Bureau, Broward County Main Jail. At approximately 3:20 a.m., BELL was being booked into Broward County Jail after being arrested by Seminole Police Department. BELL's charges by Seminole Police Department required that BELL be "strip searched" before being processed for intake into the jail. TYRIE took BELL into one Cell 2, one of the "strip search cells" to begin the search process. Once TYRIE was in Cell 2 with BELL, BELL refused to comply with the strip search process and attempted to walk out of the cell. TYRIE told BELL he needed to be searched due to one of his charges and attempted to escort BELL back to Cell 2. TYRIE placed his hand on BELL's shoulder when without warning BELL punched TYRIE with a closed fist on the right side of his face, near his eye. In an attempt to subdue BELL, TYRIE struck BELL in the face and chest. BELL took a wrestling stance, squatted down attempting to grab TYRIE by wrapping his arms around his legs to lift him up. TYRIE placed his weight on BELL's back and they both fell to the floor, causing BELL to strike his face on the cell floor. MAGLOIRE came in to the cell to assist TYRIE in attempting to restrain BELL. TYRIE and MAGLOIRE continuously ordered BELL to place his hands behind his back so he could be placed in handcuffs, but BELL refused. MAGLOIRE brought BELL into a prone position to handcuff him, but was only able to handcuff BELL's right hand. BELL continued to punch TYRIE and MAGLOIRE with his left hand and was kicking at the deputies. TYRIE struck BELL on his left side and MAGLOIRE punched BELL in the ribs are to gain control of BELL who finally complied. MAGLOIRE was able to place BELL in handcuffs and assisted him to a standing position.

BELL was taken to the Nurse's station and checked for injuries by the medical staff, but refused medical treatment. BELL was then taken back to Cell 2 to strip search him, issue a uniform and be processed for jail.

his Pretrial Statement forthwith.

TYRIE charged BELL with Battery on a Law Enforcement Officer and Resisting Arrest with Violence.

C. Exhibit List

1. Broward Sheriff's Office Event Report BS10-03-01875 dated 03/10/2010 authored by TYRIE including narrative;
2. Broward Sheriff's Office Narrative Event Report BS10-03-01875 dated 03/10/2010 authored by MAGLOIRE;
3. Probable Cause Affidavit BS10-03-01875 dated 03/09/2010 authored by TYRIE;
4. Broward Sheriff's Office Use of Force Report BS10-03-01875 dated 03/10/2010 authored by TYRIE;
5. Broward Sheriff's Office Use of Force Report BS10-03-01875 dated 03/10/2010 authored by MAGLOIRE;
6. Black and white photocopies of photographs depicting injuries to TYRIE;
7. Broward Sheriff's Office Inmate Disciplinary Report regarding subject incident;
8. Armor Correctional Care Refusal of Treatment Form dated 03/09/2010 regarding BELL;
9. Broward Sheriff's Office Department of Detention Urgent Care Medical Record dated 03/09/2010 regarding BELL;
10. Broward County Sheriff's Office Investigative Report regarding subject incident;
11. Broward Sheriff's Office Final Disposition Use of Force Charges – TYRIE, regarding subject incident;
12. Broward Sheriff's Office Final Disposition Use of Force Charges – MAGLOIRE, regarding subject incident;
13. Broward Sheriff's Office Booking Report with photograph dated 03/09/2010 regarding BELL;
14. Broward Sheriff's Office Inmate Housing Reports regarding BELL;
15. Broward Sheriff's Office Inmate Administrative Segregation Reports regarding BELL;

16. Broward Sheriff's Office Policy and Procedures
17. Any and all exhibits listed by BELL;
18. Summaries prepared pursuant to Federal Rule of Evidence 1006;
19. Demonstrative aids utilizing any and all exhibits on this list;
20. Demonstrative aids illustrating testimony of witnesses;
21. Demonstrative aids in support of argument on the evidence;
22. Rebuttal exhibits;
23. Impeachment exhibits;
24. Defendants reserve the right to amend their list of exhibits upon proper notice to BELL.

D. Witness List

1. **Deputy Regina Atkins**
Broward County Main Jail
555 SE 1st Avenue
Fort Lauderdale, FL 33301
2. **Sergeant Mary Guess**
Broward Sheriff's Office
Internal Affairs
2601 West Broward Boulevard
Fort Lauderdale, FL 33301
3. **Deputy McMorris Magloire**
Can and should be contacted through:
c/o McIntosh Schwartz, P.L.
888 SE 3rd Avenue, Suite 500
Fort Lauderdale, FL 33316
4. **Lieutenant Christopher Moffat**
Broward County Main Jail
555 SE 1st Avenue
Fort Lauderdale, FL 33301
5. **EMT Jill Orsek**
Armor Correctional Care
Broward County Main Jail
555 SE 1st Avenue

Fort Lauderdale, FL 33301

6. **Deputy Kevin Tyrie**
Can and should be contacted through:
c/o McIntosh Schwartz, P.L.
888 SE 3rd Avenue, Suite 500
Fort Lauderdale, FL 33316
7. **EMT Jennifer Welch**
Armor Correctional Care
Broward County Main Jail
555 SE 1st Avenue
Fort Lauderdale, FL 33301
9. **Medical Records Custodian**
Armor Correctional Facility
1600 North Andrews Avenue
Fort Lauderdale, FL 33316
10. **Records Custodian**
Broward County Jail
555 SE 1st Avenue
Fort Lauderdale, FL 33301
12. Any and all witnesses listed by BELL
13. Impeachment Witnesses
14. Rebuttal Witnesses
15. TYRIE and MAGLOIRE reserve the right to amend their list of witnesses upon proper notice to BELL.

E. Inmate Witness List

TYRIE and MAGLOIRE do not intend on calling any "inmate" witnesses at trial.

F. Summary of Testimony of Witnesses

1. **Deputy Regina Atkins**

Deputy Atkins will testify regarding BELL's criminal activity during the subject incident, the battery on TYRIE. Deputy Atkins will further testify as to BELL's resistance to the booking procedure and resistance to his handcuffing by TYRIE and MAGLOIRE.

2. **Sergeant Mary Guess**

Sergeant Guess will testify that she was the investigating sergeant assigned to investigate BELL's complaint of use of excessive force by TYRIE and MAGLOIRE. Sergeant Guess will testify that her investigation into the subject incident found no violation of Broward Sheriff's Office policy and found there was no evidence to support BELL's allegation of use of excessive force by TYRIE and MAGLOIRE.

3. **Deputy McMorris Magloire**

Defendant. MAGLOIRE will testify regarding BELL's criminal activity during the subject incident, as well as the circumstances and events surrounding the subject incident. MAGLOIRE will testify that he used such force as reasonably necessary in response to BELL's resistance to arrest.

4. **Lieutenant Christopher Moffat**

Lieutenant Moffat will testify regarding BELL's criminal activity during the subject incident, the battery on TYRIE. Lieutenant Bell will further testify as to BELL's resistance to the booking procedure and resistance to his handcuffing by TYRIE and MAGLOIRE.

5. **EMT Jill Orsek**

EMT Orsek will testify that she attempted to conduct a medical evaluation of BELL after the subject incident, but he refused to cooperate and refused medical treatment.

6. **Deputy Kevin Tyrie**

Defendant. TYRIE will testify regarding BELL's criminal activity during the subject incident, as well as the circumstances and events surrounding the subject incident. TYRIE will testify that he sustained injuries to his face and eye area after being punched by BELL. TYRIE will testify that he used such force as reasonably necessary in response to BELL's resistance to arrest.

7. **EMT Jennifer Welch**

EMT Welch will testify that she assisted EMT Orsek attempting to provide medical treatment to BELL after the subject incident, but BELL refused treatment and refused to cooperate with the medical staff.

9. **Records Custodian
Armor Correctional Facility**

Will testify regarding the contents and authenticity of BELL's medical records while incarcerated and treated at Broward County Main Jail.

10. **Records Custodian**
Broward County Jail

Will testify regarding the contents and authenticity of BELL's inmate records while incarcerated at Broward County Jail.

Dated: October 7, 2011
Fort Lauderdale, Florida

Respectfully submitted,

s/Robert H. Schwartz
ROBERT H. SCHWARTZ (301167)
rhs@mcintoshschwartz.com
McINTOSH SCHWARTZ, P.L.
888 Southeast 3rd Avenue, Suite 500
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Counsel for Defendants

CERTIFICATE OF SERVICE

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s/Robert H. Schwartz
ROBERT H. SCHWARTZ

BELL v. DEPUTY KEVIN TYRIE, et al.
CASE NO: 10-62214-CIV-MARTINEZ/WHITE

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Pro Se Plaintiff
[via regular U.S. Mail]

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Miami Division

Case Number:10-62214-CIV-MARTINEZ-WHITE

JAMES A. BELL,

Plaintiff,

vs.

DEPUTY KEVIN TYRIE, JR., et al.,

Defendants.

_____ /

ORDER ADOPTING MAGISTRATE'S REPORT AND RECOMMENDATION

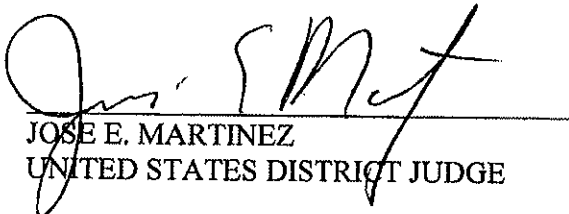
THE MATTER was referred to the Honorable Patrick A. White, United States Magistrate Judge for a Report and Recommendation on Plaintiff's Complaint (D.E. No. 1). The Magistrate Judge filed a Report and Recommendation (D.E. No. 11). No objections were filed. The Court has reviewed the entire file and record, and being otherwise fully advised in the premises, it is

ADJUDGED that United States Magistrate Judge 's Report and Recommendation (D.E. No. 11) is **AFFIRMED** and **ADOPTED**. Accordingly, it is

ADJUDGED that

1. The case shall proceed on the claim of use of excessive force against Deputies Tyrie and Magloire

DONE AND ORDERED in Chambers at Miami, Florida, this 13 day of October, 2011.


JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

Copies provided to:
Magistrate Judge White
All Counsel of Record
James A. Bell